

REMARKS

This Amendment is in response to the Office Action mailed September 10, 2003 in which claims 1-13, 15, 17-20 and 32-43 were pending. In the Office Action claims 12 and 13 were withdrawn from consideration, claims 32, 39 and 41-43 were allowed, claims 1, 5-10, 33 and 40 were rejected, and claims 2-4, 11, 15, 17, 20 and 34-37 were objected to. The Applicant graciously acknowledges the Examiner's allowance of claims 32, 39 and 41-43. With this Amendment claims 1, 8-10 and 33 are amended and the remaining claims are unchanged. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks.

First the applicant would like to discuss the withdrawal from consideration of claims 12 and 13. In response to the previous Office Action mailed on January 23, 2003 where the Examiner indicated that claims 12, 13, and 21-33 were withdrawn from consideration as being drawn to a non-elected species, applicant stated that the election made in paper 13 was made with traverse, and that applicant had elected to pursue claims 1-11, 14-20 and 32 and 33. In the previous response, applicant asserted that claims 12 and 13 also apply to the elected species of FIGs. 3A-3C, as well. In particular, applicant asserted that claims 12 and 13 depend from generic claim 1 and are also believed to be generic claims as well. Further, the features of claims 12 and 13 are included in FIG. 1, which, in paper 13, was elected as part of the elected species. Also on page 5 of the Office Action (mailed January 23, 2003) the Examiner indicated the allowability of claims 12 and 13. Therefore, applicant respectfully requests that claims 12 and 13 be reconsidered in the present prosecution. However, in the present Office Action, the Examiner did not address this portion of the applicant's response. Therefore, applicant respectfully reasserts the request that claims 12 and 13 be reinstated into the present application as being directed to the elected species.

In item 1 of the present Office Action the Examiner indicated that the drawings were objected to as failing to comply with 37 C.F.R. §1.84(p)(4) because the reference character 5 had been used to designate both the abutment surface and the stop surface. In response to the Examiner's objection the drawings are corrected to indicate the lower stop surface as element 11. Further, the drawings are correspondingly corrected as shown in the attached drawing corrections. Furthermore, the Specification is amended on page 13, line 28 and page 14, line 3 replacing the reference number 5 with the reference number 11. With these corrections it is believed that the Examiner's objection has been overcome. Reconsideration and withdrawal of the objection are respectfully requested.

In item 2 of the Office Action the Examiner rejected claims 8-10 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which is regarded as the invention. In response to the Examiner's rejection claims 8-10 are amended to correct the antecedent issue. Therefore, it is believed that the Examiner's rejection in item 2 has been overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

In item 4 of the Office Action the Examiner rejected claims 1, 5-8 and 40 under 35 U.S.C. §102(b) as being anticipated by Irving, U.S. Patent No. 2,639,524. In item 5 of the Office Action the Examiner indicated that she will consider favorably a positive recitation that the label abuts the first and second abutment surfaces. In response claim 1 is amended in accordance with the Examiner's suggestion at item 5 of the Office Action. Therefore, it is believed that the Examiner's rejection with regards to item 4 has been overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

In item 6 of the Office Action the Examiner rejected claim 33 under 35 U.S.C. §102(b) as being anticipated by Berrigan, U.S. Patent No. 1,247,622. With this Amendment claim 33 is amended. Berrigan discloses a vertical standard or style which is provided with a row of teeth with which a lock plate for a sliding window

can be brought into a locking engagement. The lock plate can be loosened from the teeth by canting and then can be displaced along the standard. The vertical standard of Berrigan is not a plant stake, and the lock plate is not a label providing visual information about a plant as required by amended claim 33. Furthermore, the lower end face of the vertical standard is flat and makes it unsuitable for being inserted into the soil of a plant pot. Thus there is no incentive for one of ordinary skill in the plant stake art to consider using the vertical standard of a plant stake.

Claim 33 is amended to include that the plant information label provides visual information. It should be noted that claims 38 and 41 also include a similar limitation that has already been searched by the Examiner. Therefore, the Applicant believes that no new matter upon which a search is necessary has been added to claim 33. Therefore, it is believed that Berrigan neither teaches nor suggests the features of claim 33. Reconsideration and withdrawal of the rejection are respectfully requested.

In conclusion, it is believed that all objection and rejections of the Office Action have been overcome. Therefore, the application is believed to be in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 

Steven M. Koehler, Reg. No. 36,188
Suite 1600 International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 339-3312